IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9701 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PARMANAND PRANJIVANDAS PARIKH

Versus

CHANDRAKNAT JAIDEVPRATAP PARIKH

Appearance:

MR VC DESAI for the Petitioners.
Ms. Falguni Joshi for MIHIR H JOSHI for Respondent No. 1
RULE SERVED for Respondents No. 2-3
RULE NOT RECD BACK for Respondent No. 3
Mr. L.B.Dabhi, ASSTT. GOVERNMENT PLEADER
for Respondents No. 4-6

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 06/02/2002

ORAL JUDGEMENT

Nine petitioners have filed the present

petition for a direction to the respondent nos. 2 to 6 and their subordinate officers to remove the encroachment on the public street with regard to projection of an unauthorised and illegal construction of ravesh made by the respondent no.1 on the northern and western side in the flats bearing survey no. 8-A situated in Rughnathdas Maholla of Viramgam town in Ahmedabad district and for a further direction to the respondents to demolish such unauthorised construction.

2. The petitioners are the residents of Viramgam. One property bearing city tikka no. 7 and survey no. 11 situated in Rughnathdas Maholla is jointly owned by the petitioners. On the northern side of the said property, there is a property being survey no. 8A belonging to the respondent no.1. On the western side of the said survey no. 8A, there is a public street of about 7 ft. width and there is a survey no. 4 owned by one Arvindbhai Soni. The respondent no.1 has made unauthorised construction of ravesh (balcony) on the northern and western sides in the flats constructed on his survey no. 8A making encroachment on the public street. The petitioner no.1 therefore, made a complaint to the respondent no. 2 Viramgam Nagarpalika and pursuant to the complaint made by the petitioner no.1, the respondent no. 3 issued a notices dated 27th September, 1993 and 4th October, 1993 directing him not to make the construction of ravesh on the northern and western side with the warning that if it is done, the same be removed, failing which the municipality will remove the said unauthorised construction. Over and above non-compliance of the said notice by the respondent no.1 the respondent nos. 2 and 3 also failed to implement the said notice and the petitioner made a complaint about such non-action on the part of the respondent nos. 2 and 3 to the respondent no. 5 Collector. Pursuant to that complaint, an inquiry was initiated and the respondent no. 1 filed a writ petition in this Court being Special Civil Application no. 4367 of 1998 against Viramgam Nagarpalika and others with a prayer of injunction restraining all the respondents from disturbing the possession of the land and construction and also an injunction restraining the respondents from demolishing the constuction put up by him on survey no. 8A. In that petition, the Chief Officer filed affidavit-in-reply wherein it is stated that the petitioner who is a respondent no.1 in this petition has made an illegal construction for which no permission has been granted and the respondent no.1 herein should stop such illegal construction failing which the municipality would take necessary steps against the respondent no.1

herein. When the court was not inclined to admit and entertain the petition, that petition filed against the respondent no.1 herein was unconditionally withdrawn on 7.9.1995 and an amount of Rs.1000/- was awarded as costs to the municipality. Still however, the respondent nos. 3 to 5 have not taken any action for removal of the unauthorised construction and they are not carrying on their obligatory duties as contemplated under the provisions of Gujarat Municipalities Act and also Bombay Land Revenue Code and Rules made thereunder. One notice dated 20.9.1997 was given to the municipality with a request to take action for removing the unauthorised construction. Inspite of the fact that the construction made by the respondent no.1 on northern and western side of survey no. 8A in contravention of the terms of Rajachitthi, which amounts to encroachment on the public street and that is contrary and in violation of the provisions of Gujarat Municipaliities Act. The respondents have remained absolutely inactive and failed to remove the said unauthorised construction. Hence, this petition.

3. It is also stated that the unauthorised and illegal construction causes great obstruction and also diminishes enjoyment of right of light and air of the residents of Maholla including the petitioners which affect the health of the petitioners and their family members and other residents of the said Maholla. It is obligatory on the part of the respondents to remove the same. There is an inaction and non-exercise of statutory powers conferred by chapter-11 of the Gujarat Municipalities Act by the respondent nos. 2 and 3 and also respondent nos. 5 and 6 by not exercising the powers under sections 37 and 202 of the Bombay Land Revenue Code. The petitioners have been suffering irreparable injury and damage on account of the same.

4. Heard the learned counsel for the parties. In the present case, no affidavit has been filed by any of the respondents. The learned counsel for the petitioners pointed out from Annexure "1" that the notice dated 27th September, 1993 was issued by the Chief Officer of Viramgan Nagarpalika to the respondent no.1 wherein it is stated that the respondent no.1 has made construction of Ravesh (balcony). As per Rajachitthi no.144 dated 19th September, 1993, permission for Ravesh has not been given to him and he was informed by the notice not to project Ravesh on northern and western sides and not to construct Ravesh and if made, should be removed, failing which illegal construction shall be removed at the costs and risk of the respondent no.1.

Otherwise, the Nagarpalika shall be compelled to take legal action against him. The learned counsel for the petitioners also referred another notice dated 4th October, 1993 given by the Chief Officer to the respondent no.1 that respondent no.1 has been informed by the notice not to project the Ravesh on western side. Inspite of that notice, the respondent no.1 was making construction of Ravesh at the height of 8 ft. and he was informed to remove such construction which has been made by him. The respondent no.1 was required to give explanation within three days for such construction which had been made without permission failing which the Nagarpalika would file a complaint before police in accordance with law and such construction shall be removed at his costs and risk.

5. The respondent no.1 had already been informed on 29th September, 1993 and 4th October, 1993 asking the respondent no. 1 not to make construction of Ravesh. He also referred the panchnama dated 30th September, 1993 made in presence of the Chief Officer of Nagarpalika wherein it is stated that there is a construction of ravesh of about 3 ft. on the western side and 3 ft. on the northern side. He also relied on the decision of K. Ramadas Shenoy vs. The Chief Officer, Town Municipal Council, Udipi and others reported in AIR 1974, SC, 2177 wherein a cinema house was constructed without permission of the municipal authority. The order of the High Court leaving resolution dated 19th June, 1970 being Annexure "D" to the petition undisturbed was set aside. But in the present case, the facts are totally different. It appears that the construction of the flat or house of the respondent no.1 was approved by the municipality, but the construction of the balcony projected on eastern and western side was not approved in the plan which was sanctioned by the municipal authority. Therefore, the construction of the balcony of 3 ft. on each side was illegal and unauthorised and the petitioner has sought for a direction to the respondent authorities for removal of the unauthorised balcony made in the house of respondent no.1. It appears that the balconies were not sanctioned in the plan, and hence it is considered by the municipality that it was an illegal construction though those balconies could be beneficial for enjoyment of the house of the respondent no.1 and those balconies could have been regularised after imposing penalty or compounding fees by the municipal authorities. It is entirely within the discretion of the municipal authorities to remove the unauthorised balconies or to allow the respondent no.1 on payment of compound fees

with or without penalty.

6. In the facts and circumtances of the case, this petition is being disposed of finally with a direction to the respondent nos. 2,3 and 4 municipal authorities to consider and pass appropriate orders, if necessary, for removal of the unauthorised construction on the balconies after giving a reasonable opportunity of hearing to the parties concerned including respondent no.1, within a period of two months from the date of production of certified copy of this order or receipt of writ from this court. The respondent authorities will consider and decide the representation, if any, of the petitioners in accordance with law. Rule is discharged with no order as to costs.

(Kundan Singh,J)

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